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10/612,564	07/02/2003	Hiroyuki Kanari	K005-5016	4519

7590

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EXAMINER

PRUNNER, KATHLEEN J

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,564

Applicant(s)

KANARI ET AL.

Examiner

Kathleen J. Prunner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-9, 11, 13-16 and 18-23 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 10, 12, 17, 24 and 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The drawings are objected to because: (A) with regard to Figs. 1, 5, 6 and 7, the reference character "2" and its lead line should be deleted (since it appears that the front piece is identified by two difference reference characters) and an arrowed lead line indicating that 2 represents the combination of parts 22 and 23 should be added; (B) in Fig. 3, "2" should be deleted especially since the sleeve 9 forms no part of the tubular member or barrel 2; and (C) in Figs. 4 and 12, the lowermost rib 17, 139 should also be shown in phantom lines to indicate the alternative position thereof. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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3. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Marked-up Drawings" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

Specification

4. The following informalities in the specification are noted: (A) on page 33, on line 6, --an-- should be inserted after "in", and "directions" should be changed to read --direction--. Appropriate correction is required.

5. The specification is objected to as failing to provide proper antecedent basis for the claimed terminology. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). The claim terminology which lacks such antecedent basis is as follows: (A) a tubular member having "a longitudinal axis", as called for by claims 1, 19 and 21; (B) a cap plate "pivotally connected" to the airtight sleeve, as called for by claims 2 and 20; (C) the projecting rib abuts an inner surface of the tubular member "so as to pivot the cap plate", as called for by claims 3 and 19; (D) to allow the cap plate "to pivot in a direction" to open the bore, as called for by claim 4; (E) the bore thereof is disposed "at an oblique angle relative to a longitudinal axis of the airtight sleeve", as called for by claim 6; (F) the airtight sleeve "having an interior space defining an airtight chamber surrounding the writing tip of the writing component when the writing component is in the housed position", as called for by claim 21; (G) a hinged plate "for undergoing pivotal movement", as called for by claim 22; (H) the projecting rib abuts an inner surface of the tubular member "so as to pivot the hinged plate", as called for by claim 23; and (I) the "hinged plate to pivot in a direction to open the bore", as called for by claim 24. Correction is required.

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6. The following informalities in the claims are noted: (A) in claim 1, on line 5, --an-- should be inserted after "in"; (B) in claim 1, on line 6, "directions" should be changed to read --direction--; (C) on line 1 of claims 2-20 and 22-25, "A" should be changed to read --The--; (D) on line 1 of claims 2-20 and 22-25, the semi-colon should be changed to a comma; (E) in claim 14, on line 4, "directions" should be changed to read --direction--; (F) in claim 16, on line 4, "directions" should be changed to read --direction--; and (G) in claim 21, on line 4, --a-- should be inserted after "in", and "directions" should be changed to read --direction--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claim 16 contains a term lacking proper antecedent basis. The claim recites the limitation "the tubular body" in line 7. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-3, 7, 9, 11, 13-15 and 18-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Hashimoto et al. With respect to both claims 1 and 21, Hashimoto et al. disclose a

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writing instrument having all the claimed features including a tubular member (constituted by barrel or casing 1) having a longitudinal axis (note, e.g., Fig. 1) and an aperture or opening 31 at an end thereof, a writing component (constituted by writing member 10) mounted in the tubular member 1 and having a writing tip 14 at an end portion thereof, the tubular member 1 and the writing component 10 being movable relative to one another in an axial direction along the longitudinal axis of the tubular member 1 (note Figs. 1, 4, 5 and 6) between a writing position at which the writing tip 14 protrudes from the aperture or opening 31 of the tubular member 1 (note Fig. 6) and a housed or sealing position at which the writing tip 14 is disposed in the tubular member 1 (note Fig. 1), and an airtight sleeve or sealing tube 16 (note lines 34-46 in col. 3) connected to the end portion of the writing component 10 for movement between an advanced position (note Fig. 6) and a retracted position (note Fig. 5), the airtight sleeve or tube 16 having a bore (note, e.g., Fig. 1) through which the end portion of the writing component 10 passes during movement of the writing component 10 between the writing or position and the housed or sealed position. With respect to claims 2, 19, 20 and 22, Hashimoto et al. also disclose a cap plate or a disk-shaped sealing body 21 pivotally connected to the airtight sleeve or tube 16 for opening (note Figs. 4-6) and closing (note Fig. 1) the bore of the airtight sleeve or tube 16. With respect to claims 3, 19 and 23, Hashimoto et al. further disclose a projecting rib (constituted by the rounded front surface thereof, note Fig. 11) connected to the cap plate 21 so that when the airtight sleeve or tube 16 moves from the advanced position to the retracted or sealing position, the projecting rib abuts an inner surface 32 of the tubular member 1 so as to pivot the cap plate 21 in such a direction that the cap plate 21 closes the bore of the airtight sleeve or tube 16 (note Fig. 1 and lines 17-22 in col. 4). With regard to claim 7, Hashimoto et al. additionally disclose that the airtight sleeve or sealing tube 16 has a flange (constituted by connector 11) disposed at rear portion thereof (note Fig. 1), and that the tubular member 1 has a stop element (constituted by rod 8) for engaging the flange 11 of the airtight sleeve or sealing tube 16 to limit movement of the airtight sleeve or sealing tube 16 from the retracted position (note Fig. 5) to the advanced position (note Fig. 6). With regard to claims 9 and 15, Hashimoto et al. also disclose that the

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tubular member 1 has a main body (constituted by barrel 1) and a front piece (constituted by tube 27) connected to the main body 1 (note Fig. 1) and wherein the airtight sleeve or sealing tube 16 is disposed in the front piece 27 of the tubular member. With respect to claim 11, Hashimoto et al. further disclose a holding member (constituted by packing 15) disposed in the main body 1 of the tubular member for elastically supporting the writing component. With respect to claims 13 and 18, Hashimoto et al. additionally disclose that the airtight sleeve or sealing tube 16 has a flange (constituted by connector 11) disposed at rear portion thereof (note Fig. 1), and that the tubular member 1 has a stop element (constituted by rod 8) disposed at a rear portion of the front piece 27 for engaging the flange 11 of the airtight sleeve or sealing tube 16 to limit movement of the airtight sleeve or sealing tube 16 from the retracted position (note Fig. 5) to the advanced position (note Fig. 6). With regard to claim 14, Hashimoto et al. also disclose a rotating cam-type feeding mechanism that is disposed in the tubular member for moving the writing component 10 in the axial direction (note from line 59 in col. 2 to line 18 in col. 3). With regard to claim 20, Hashimoto et al. further disclose that the projecting rib (constituted by the rounded front surface thereof, note Fig. 11) is formed of elastic or resilient material (note Fig. 10 and lines 58-61 in col. 5). With regard to claim 21, Hashimoto et al. additionally disclose that the airtight sleeve or sealing tube 16 has an interior space defining an airtight chamber surrounding the writing tip 14 of the writing component 10 when the writing component 10 is in the housed or sealed position (note Fig. 1) and a bore through which the writing tip 14 of the writing component 10 passes during movement of the writing component 10 between the writing position and the housed or sealed position (note Figs. 4-6).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hashimoto et al. in view of Nikonow. Although Hashimoto et al. fail to disclose that the airtight sleeve or tube 16 has an edge proximate the bore thereof that is disposed at an oblique angle relative to a longitudinal axis of the airtight sleeve or tube 16, attention is directed to Nikonow who discloses another writing instrument having a pivoting cap plate or cover 10 to enclose the writing tip 2 when in the closed or retracted position in which the cap plate or cover 10 is mounted so as to be disposed at an oblique angle relative to a longitudinal axis of the writing instrument in order to reduce the angle of its movement (note lines 71-73 on page 1). It would have been obvious to one of ordinary skill in the writing instrument art, at the time the invention was made, to form the seat for the cap plate or the disk-shaped sealing body 21 of Hashimoto et al. so that it is disposed at an oblique angle relative to a longitudinal axis in view of the teachings of Nikonow in order to reduce the angle of its movement.

14. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hashimoto et al. in view of Shimizu. Although Hashimoto et al. fail to disclose that the airtight sleeve or tube 16 can be generally rectangularly-shaped, attention is directed to Shimizu who discloses another writing instrument having an airtight or sealed sleeve or chamber in which the chamber formed by such has a generally rectangular shape (note Fig. 20 and claim 4 in col. 21). To employ a generally rectangularly-shaped seal chamber as, for example, taught by Shimizu on the Hashimoto et al. device would have been obvious to one of ordinary skill in the art wherein so doing would amount to mere substitution of one seal chamber for another in the same art that would work equally well on the Hashimoto et al. device.

15. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hashimoto et al. in view of Yamamoto et al. Hashimoto et al. disclose that the rotating cam-type feeding mechanism comprises a rotational cam 7 connected to the writing component 10 for undergoing rotational movement and movement in the axial direction, an outer cam 5 having a cam groove

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(note lines 59-61 in col. 2) for guiding movement of the rotational cam 7 in the axial direction. Although Hashimoto et al. fail to disclose that the rotating cam-type feeding mechanism includes a guide cam, attention is directed to Yamamoto et al. who disclose another writing instrument having a rotating cam-type feeding mechanism that includes a rotational cam 2 connected to the writing component (constituted by refill 5) for undergoing rotational movement and movement in the axial direction, an outer cam (constituted by cam body 1) having a cam groove 26a for guiding movement of the rotational cam 2 in the axial direction, and a guide cam (constituted by cam bar 3) connected to a rear end of the front piece of the tubular body (note Fig. 1) and having a cam element (constituted by peaks 31) for rotating the rotational cam 2. To employ a guide cam that is connected to a rear end of the front piece of the tubular body and having a cam element for rotating the rotational cam as, for example, taught by Yamamoto et al. on the Hashimoto et al. device would have been obvious to one of ordinary skill in the writing instrument art wherein so doing would amount to mere substitution of one rotating cam-type feeding mechanism for another in the same art that would work equally well on the Hashimoto et al. device.

Allowable Subject Matter

16. Claims 4, 5, 10, 12, 17, 24 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if claims 4, 10, 12, 17 and 24 are rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044.

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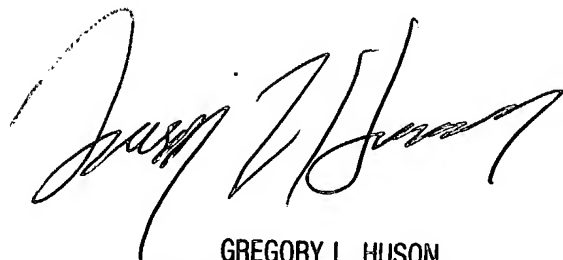
18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen J. Prunner

June 29, 2004



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